

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Schiavo	Team: Team # 4	CCRB Case #: 201309912	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/16/2013 5:30 PM	Location of Incident: 69-19 78th Street	Precinct: 104	18 Mo. SOL 4/16/2015	EO SOL 4/16/2015	
Date/Time CV Reported Thu, 10/17/2013 2:14 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/22/2013 12:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Wright	21501	935991	104 PCT
2. POM Louis Marinacci	22579	941229	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Wright	Abuse: PO Anthony Wright strip-searched § 87(2)(b)	
B.POM Anthony Wright	Abuse: PO Anthony Wright frisked § 87(2)(b)	
C.POM Anthony Wright	Abuse: PO Anthony Wright searched § 87(2)(b)	
D.POM Louis Marinacci	Abuse: PO Louis Marinacci searched the car in which § 87(2)(b) was an occupant.	
E.POM Anthony Wright	Abuse: PO Anthony Wright searched the car in which § 87(2)(b) was an occupant.	
F.POM Louis Marinacci	Abuse: PO Louis Marinacci searched § 87(2)(b)	

### Case Summary

On October 17, 2013, § 87(2)(b) filed his complaint with the IAB Command Center, generating log #2013-44354 (encl. 8-10). The complaint was received by the CCRB on October 22, 2013 (encl. 11-12). On October 16, 2013, at 5:30 p.m., PO Anthony Wright and PO Louis Marinacci of the 104<sup>th</sup> Precinct pulled over § 87(2)(b)'s vehicle outside of 69-12 78<sup>th</sup> Street in Queens. The following allegations resulted from the officers' actions:

- **Allegation A – Abuse of Authority:** PO Anthony Wright strip-searched § 87(2)(b) § 87(2)(g)
- **Allegation B – Abuse of Authority:** PO Anthony Wright frisked § 87(2)(b) § 87(2)(g)
- **Allegation C – Abuse of Authority:** PO Anthony Wright searched § 87(2)(b) § 87(2)(g)
- **Allegation D – Abuse of Authority:** PO Louis Marinacci searched the car in which § 87(2)(b) was an occupant.
- **Allegation E – Abuse of Authority:** PO Anthony Wright searched the car in which § 87(2)(b) was an occupant. § 87(2)(g)
- **Allegation F – Abuse of Authority:** PO Louis Marinacci searched § 87(2)(b) § 87(2)(g)

### Results of Investigation

#### Civilian Statements

##### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) is a § 87(2)(b)-old white male who is 5'10" tall, weighs 200 pounds, and has black hair and brown eyes.

##### Statement to IAB

On October 17, 2013, § 87(2)(b) provided a statement to the IAB Command Center (encl. 8-10). On October 16, 2013, at 5:30 p.m., an officer whom he identified as PO Wright of the 104<sup>th</sup> Precinct pulled over his vehicle at 69-12 78<sup>th</sup> Street in Queens. PO Wright instructed § 87(2)(b) to exit the vehicle and then searched him.

##### CCRB Testimony

On October 23, 2013, § 87(2)(b) provided a brief phone statement to the CCRB (encl. 13), and he was interviewed at the CCRB on October 29, 2013 (encl. 14-16). § 87(2)(g)

On October 16, 2013, at 5:30 p.m., § 87(2)(b) made a left turn out of a 7 Eleven parking lot on Eliot Avenue somewhere between 69<sup>th</sup> Street and 78<sup>th</sup> Street in Queens. § 87(2)(g)

§ 87(2)(b) was by himself and was driving a black Mazda that is registered in his mother's name. § 87(2)(b) was wearing his seatbelt and did not commit any VTL or traffic violations. Immediately before exiting the parking lot, § 87(2)(b) noticed an officer whom he recognized from previous arrests as PO Anthony Wright from the 104<sup>th</sup> Precinct parked near the 7 Eleven. § 87(2)(b) described PO Wright as a 35-year-old Hispanic male who was 5'8" tall, had an average build, and curly hair.

After about two blocks, PO Wright, who was operating a black Impala, indicated for § 87(2)(b) to pull over. § 87(2)(b) made a right turn onto 78<sup>th</sup> Street in order to get off of a heavily trafficked street. § 87(2)(b) stopped his car in front of 69-12 78<sup>th</sup> Street. PO Wright approached the driver's side of § 87(2)(b)'s vehicle. An officer whom § 87(2)(b) identified as PO "Machielli" and described as a 35-year-old white male who was 5'7" tall and weighed 175 pounds, and was identified via the investigation as PO Louis Marinacci of the 104<sup>th</sup> Precinct, remained in the police vehicle. § 87(2)(b) placed his hands on the steering wheel and did not reach underneath any seats.

PO Wright addressed § 87(2)(b) by name and told § 87(2)(b) that he needed to start wearing his seat belt. § 87(2)(b) told PO Wright that he was wearing his seat belt. PO Wright asked § 87(2)(b) to exit the vehicle. § 87(2)(b) exited the vehicle and stood with his buttocks against the driver's side door with his hands up. There was a lighter in his left pants pocket, but § 87(2)(b) did not remember that he had the lighter. PO Wright asked § 87(2)(b) what the object was. § 87(2)(b) stated that he did not know. PO Wright told him to remove the item, and § 87(2)(b) complied.

PO Wright asked § 87(2)(b) if he had any weapons. § 87(2)(b) answered that he did not. PO Wright said he was going to frisk § 87(2)(b) to ensure that he did not have any weapons. PO Wright stuck his hands underneath the front waistband of § 87(2)(b)'s pants and underwear. He then groped § 87(2)(b)'s penis all the way down to his scrotum. § 87(2)(b) said, "Officer, I'd appreciate it a lot if you no longer touched my penis. Please remove your hand from my pants." § 87(2)(g)

PO Wright then handcuffed § 87(2)(b). PO Wright also frisked § 87(2)(b)'s outer clothing and then placed his hands into all of § 87(2)(b)'s pockets. He instructed § 87(2)(b) to take off his shoes, and § 87(2)(b) complied. PO Wright asked § 87(2)(b) for his driver's license, but § 87(2)(b) did not have his driver's license in his possession at the time of the incident. Meanwhile, PO Marinacci searched the entire passenger's side of § 87(2)(b)'s vehicle. § 87(2)(b) did not specify when PO Marinacci exited the police vehicle. PO Marinacci took § 87(2)(b)'s key and opened the glove compartment of § 87(2)(b)'s vehicle, which was locked. PO Marinacci removed old parking summonses and court appearance notifications.

PO Wright walked § 87(2)(b) to the back of § 87(2)(b)'s vehicle. He then searched the whole interior of § 87(2)(b)'s vehicle while PO Marinacci stayed with § 87(2)(b). PO Wright opened the trunk, but § 87(2)(b) immediately used his body to close it. PO Marinacci then searched all of § 87(2)(b)'s pockets. § 87(2)(b) asked PO Marinacci what the reason was for detaining him. PO Marinacci stated that it was because § 87(2)(b) had a prior history with the 104<sup>th</sup> Precinct. § 87(2)(b) replied that he believed the detainment was illegal and requested to be released from handcuffs. PO Marinacci granted this request. § 87(2)(b) asked PO Wright if he was free to leave, and PO Wright said that he was free to leave. Because of an issue with a locksmith damaging his ignition, § 87(2)(b) has to hotwire his vehicle in order to start it. PO Wright took photographs of the vehicle's registration, license plate, and the interior of the vehicle.

§ 87(2)(b) and the officers re-entered their vehicles. § 87(2)(b) placed a call to his

mother to inform her about what was happening. § 87(2)(b) opened his driver's side door in order to leave insufficient space for the officers to drive away. PO Wright came over the loudspeaker and told § 87(2)(b) to close his door. § 87(2)(b) ignored this request. PO Wright then approached and told § 87(2)(b) not to go anywhere. He requested the vehicle's registration, which § 87(2)(b) provided. About 10-15 minutes later, § 87(2)(b) arrived. PO Wright verbally obtained § 87(2)(b)'s pedigree information and accepted § 87(2)(b)'s identification as a substitute for § 87(2)(b)'s. PO Wright issued § 87(2)(b) a summons for § 87(2)(b) (encl. 23).

### **NYPD Statements:**

#### **Subject Officer: PO ANTHONY WRIGHT**

- *PO Wright is a § 87(2)(b)-old black male who is 5'8" tall, weighs 190 pounds, and has brown hair and brown eyes.*
- *On October 16, 2013, PO Wright worked from 1:00 p.m. to 9:35 p.m. with PO Marinacci. They were in uniform and were assigned to SNEU in a black Impala.*

#### **Memo Book**

According to PO Wright's memo book (encl. 17-19), at 5:30 p.m., he conducted a car stop in front of 61-42 77 Street for a seat belt violation. The motorist was § 87(2)(b) who was driving a 1991 Mazda with New York license plate #§ 87(2)(b). PO Wright issued a summons for the seat belt violation. § 87(2)(b) did not have identification. The steering column of the vehicle was broken, there was no key, and the vehicle was wired with wires exposed. § 87(2)(b) was frisked and refused to cooperate during the stop. § 87(2)(b) was detained while his mother, § 87(2)(b) arrived at the scene to verify her son. A stop and frisk report was prepared for suspicion of grand larceny auto. § 87(2)(b) verified ownership of the vehicle.

#### **Stop and Frisk Report**

According to the stop and frisk report (encl. 20-22), § 87(2)(b) was stopped on suspicion of grand larceny auto. The circumstances leading to the stop were furtive movements and a broken steering column with wires exposed. Additional factors were that the time of day/week corresponded to criminal activity, evasive, false, and inconsistent responses to officers' questions, changing direction at the sight of officer, and no key or ignition in the vehicle. § 87(2)(b) was frisked, the basis of which was refusal to comply with officers' directions, violent crime suspected, and furtive movements. § 87(2)(b) was not searched.

#### **CCRB Statement**

PO Wright was interviewed at the CCRB on February 7, 2014 (encl. 24-26). On October 16, 2013, at 5:30 p.m., PO Wright was parked at the corner of Lutheran Avenue and Eliot Avenue in Queens facing west. He was in the driver's seat of the police vehicle and PO Marinacci was in the passenger seat. PO Wright observed a black Mazda driving eastbound on Eliot Avenue. As the vehicle approached the police vehicle, PO Wright noticed that the operator was not wearing a seat belt. PO Wright immediately made a U-turn to conduct a car stop. He engaged the vehicle's lights and sirens, and the motorist continued to drive. The purpose of the stop was to issue a summons to the motorist. At that point, PO Wright did not know that the motorist was § 87(2)(b).

§ 87(2)(b) continued to drive for two or three blocks after the lights and sirens were engaged. The fact that § 87(2)(b) continued to drive raised PO Wright's suspicion about

whether the vehicle was stolen. § 87(2)(b) made a right turn onto 77<sup>th</sup> Street and then pulled over. PO Wright and PO Marinacci exited their vehicle. PO Wright approached the driver's side of § 87(2)(b)'s vehicle and PO Marinacci approached the passenger side. PO Wright did not address § 87(2)(b) by name. § 87(2)(b) told PO Wright that he had arrested him before. This refreshed PO Wright's recollection of who § 87(2)(b) was. PO Wright asked § 87(2)(b) for his license and registration. § 87(2)(b) could not produce either, but PO Wright did not remember whether he explained why he did not have these documents.

PO Wright immediately noticed that the steering column of the vehicle was broken and wires were exposed. This added to PO Wright's suspicion that the vehicle was stolen. Additionally, there were two registration stickers on the windshield of the vehicle: one from Pennsylvania and one from New York. PO Wright asked § 87(2)(b) why the steering column was broken. He did not remember what § 87(2)(b)'s response was, but it did not assuage PO Wright's suspicion. § 87(2)(b)'s right hand was by his side, and PO Wright feared for his safety because he was unable to clearly see § 87(2)(b)'s hands. PO Wright did not remember whether § 87(2)(b) reached for anything in his vehicle. PO Wright asked § 87(2)(b) to exit the vehicle. § 87(2)(b) asked why and refused several requests, but he eventually stepped out on his own accord.

Because PO Wright feared for his safety due to the violent nature of the crime that he suspected, he asked § 87(2)(b) if he had any weapons or contraband. PO Wright did not remember what § 87(2)(b) said in response. PO Wright handcuffed § 87(2)(b) and brought him to the back of the car. He frisked § 87(2)(b)'s waistband and possibly his arms. The reason for the frisk was because of the suspected violent crime. There were no other reasons to believe that § 87(2)(b) had a weapon. PO Wright did not remember seeing any bulges on § 87(2)(b)'s person. PO Wright never reached underneath § 87(2)(b)'s waistband or underwear. He did not grope § 87(2)(b)'s penis, and did not remember § 87(2)(b) making an allegation of sexual misconduct. PO Wright did not search § 87(2)(b)'s pockets or inside of his shoes. PO Wright did not see PO Marinacci frisk or search § 87(2)(b).

PO Marinacci stood with § 87(2)(b). PO Wright approached § 87(2)(b)'s vehicle. He stood outside of it and leaned in to search the reachable area of the driver's side, including the area underneath the seats and between the seats. PO Wright did not move anything in the car other than possibly moving a seat back and forth. There was no key to the vehicle; it had to be hotwired in order to start. PO Wright did not take a key and open the glove compartment.

PO Wright returned to the back of § 87(2)(b)'s vehicle and stood with § 87(2)(b) while PO Marinacci searched the reachable area of the passenger's side. PO Wright never opened the trunk of § 87(2)(b)'s vehicle. PO Wright allowed § 87(2)(b) to call his mother, and she arrived about 15 minutes later. The block where the car stop occurred is a narrow one-way street, and § 87(2)(b) possibly could have blocked the officers from leaving by opening his driver's side door. PO Wright did not recall this happening.

§ 87(2)(b) presented her identification and verified ownership of the car and stated that § 87(2)(b) was her son. PO Wright prepared a stop-and-frisk report and released § 87(2)(b) with a summons for § 87(2)(b). In order to issue the summons, he obtained § 87(2)(b)'s information via the computer in the police vehicle.

**Subject Officer: PO LOUIS MARINACCI**

- PO Marinacci is a § 87(2)(b)-old white male who is 5'7" tall, weighs 180 pounds, and has brown hair and brown eyes.
- On October 16, 2013, PO Marinacci worked from 1:00 p.m. to 9:35 p.m. with PO Wright. They were in uniform and were assigned to SNEU in a black Impala.

### **Memo Book**

According to PO Marinacci's memo book (encl. 30-31), at 5:30 p.m., he conducted a car stop in front of 61-42 77 Street. At 6:26 p.m., PO Wright prepared a stop-and-frisk report and issued a summons.

### **CCRB Statement**

PO Marinacci was interviewed at the CCRB on February 7, 2014 (encl. 32-34). ■■■

§ 87(2)(g) PO Marinacci made the observation of § 87(2)(b) not wearing his seat belt as § 87(2)(b) drove perpendicularly to the officers' parked vehicle. After the lights and sirens were engaged, § 87(2)(b) drove half a block before making a right turn onto 77<sup>th</sup> Street. When the officers approached § 87(2)(b)'s vehicle, § 87(2)(b)'s hands were visible. PO Marinacci had never interacted with § 87(2)(b) before.

PO Marinacci observed that the steering column of the vehicle was broken, there were exposed wires, the ignition was missing, and there were registration stickers from New York and Pennsylvania on the windshield. This raised PO Marinacci's suspicion that § 87(2)(b) had stolen the car, which is a violent crime. When PO Wright asked § 87(2)(b) for his license, registration, and insurance, § 87(2)(b) started to reach into different parts of his vehicle, hiding his hands from PO Marinacci's view. PO Marinacci asked § 87(2)(b) to keep his hands visible because there was a lot of clutter in the car and a weapon could have been concealed underneath anything therein.

The officers asked § 87(2)(b) questions, and § 87(2)(b) provided answers that were irrelevant to the questions. PO Marinacci did not remember any specific questions to which § 87(2)(b) provided evasive answers. At some point during the car stop, PO Wright informed PO Marinacci that he had arrested § 87(2)(b) before. PO Wright asked § 87(2)(b) to exit the vehicle, and § 87(2)(b) complied after the first request.

While outside of the vehicle, § 87(2)(b) continued to try to place his hands in his pockets after being instructed to keep his hands visible. § 87(2)(b) also kept trying to return to his vehicle, and the officers had to issue him multiple instructions not to move. PO Marinacci did not observe where PO Wright frisked on § 87(2)(b)'s body. PO Marinacci did not observe PO Wright reach underneath § 87(2)(b)'s waistband or underwear. He did not see PO Wright grope § 87(2)(b)'s penis. PO Marinacci did not see PO Wright search § 87(2)(b)'s pockets or shoes. PO Marinacci did not frisk or search § 87(2)(b).

### **Photos**

PO Wright and PO Marinacci provided the CCRB with three photos that they took of the interior of § 87(2)(b)'s vehicle (encl. 27-29). The photos show inspection and registration stickers from New York and Pennsylvania mounted on the windshield, the broken steering column, several exposed wires, and the ignition missing.

### **Other Evidence**

The vehicle stop occurred on a residential block, and there was no video footage available.

### **Summons for Incident and Disposition**

- A request to the New York State Department of Motor Vehicle to determine the status of the summons is pending.

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a notice of claim with the City of New York as of February 20, 2014.

### **Civilian Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian CCRB History**

- § 87(2)(b) has been a victim in the following CCRB complaints (encl. 7):

- § 87(2)(b)

### **Subject Officers' CCRB Histories**

- PO Wright has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. 4-5).
- PO Marinacci has been a member of the service for seven years and there are two substantiated CCRB allegations against him (encl. 6):
  - In CCRB #201104530, the Board substantiated question and frisk allegations against PO Marinacci. The police department imposed a penalty of Instructions.

### **Conclusion**

### **Identification of Subject Officers**

- PO Wright and PO Marinacci acknowledged their interaction with § 87(2)(b)

### **Investigative Findings and Recommendations**

#### **Allegation A – Abuse of Authority: PO Anthony Wright strip-searched § 87(2)(b)**

§ 87(2)(b) alleged that after he stepped out of his vehicle, PO Wright placed his hands underneath his waistband and underwear and then groped his penis. PO Wright denied ever searching underneath § 87(2)(b)'s underwear or his waistband in general. PO Marinacci did not observe PO Wright strip-search § 87(2)(b). There were no civilian witnesses and no video footage was available. § 87(2)(g)

#### **Allegation B – Abuse of Authority: PO Anthony Wright frisked § 87(2)(b)**

It is undisputed that PO Wright frisked § 87(2)(b). According to CPL 140.50 (encl. 1), an officer may frisk a subject for a deadly weapon when he reasonably suspects that he is in danger of physical injury.

PO Wright and PO Marinacci both testified that when they first stopped § 87(2)(b)'s vehicle, the purpose was to issue § 87(2)(b) a summons for a seat belt violation. PO Wright's suspicions were raised based on the distance that § 87(2)(b) traveled after PO Wright engaged the police vehicle's lights and sirens. The officers' suspicions were raised even higher when they observed the broken steering column with exposed wires, registration stickers from two states on the windshield, and a missing ignition. § 87(2)(g)

PO Wright photographed these items and provided them to the CCRB.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Abuse of Authority: PO Anthony Wright searched § 87(2)(b)**

§ 87(2)(b) alleged that PO Wright searched his pockets and inside of his shoes. PO Wright documented in the stop and frisk report, as well as in his CCRB testimony, that he did not search § 87(2)(b). PO Marinacci did not witness PO Wright search § 87(2)(b)'s pockets or shoes. As noted above in Allegation A, there were no civilian witnesses and no video footage was available. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Abuse of Authority: PO Louis Marinacci searched the car in which § 87(2)(b) was an occupant.**

**Allegation E – Abuse of Authority: PO Anthony Wright searched the car in which § 87(2)(b) was an occupant.**

It is undisputed that PO Marinacci and PO Wright both searched the reachable area of § 87(2)(b)'s vehicle.

The court ruled in People v. Fox (encl. 2-3a) that when an officer initiates a vehicle stop because of an observed violation and then observes a broken steering column with wires hanging loose, the officer has probable cause to believe that the vehicle is stolen. People v. Fox 626 N.Y.S.2d 840 (1995).

The court also ruled in People v. Blasich (encl. 3b-h) that it is permissible for an officer to search a vehicle for evidence related to a crime for which the officer has probable cause to believe has been committed. People v. Blasich 543 N.Y.S.2d 40 (1989).

§ 87(2)(b) acknowledged that his ignition was broken and he had to hotwire his vehicle in order to start it. PO Wright and PO Marinacci both corroborated this and PO Wright provided photographs that he took in order to document the broken steering column. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

As stipulated by People v. Blasich, because there was probable cause to believe that the vehicle was stolen, PO Wright and PO Marinacci were justified in their search of the vehicle for additional evidence related to the crime of auto theft.



§ 87(2)(g)

**Allegation F – Abuse of Authority: PO Louis Marinacci searched** § 87(2)(b)

§ 87(2)(b) alleged that after PO Wright searched his pockets, PO Marinacci searched his pockets as well. PO Marinacci denied searching § 87(2)(b) PO Wright did not see PO Marinacci search § 87(2)(b) As noted above in Allegations A and C, there were no civilian witnesses and no video footage was available. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date